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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,812	09/08/2003	Wolfgang Danzer	038724.52699US	7094
23911 7590 08/08/2007 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			EXAMINER ELVE, MARIA ALEXANDRA	
			ART UNIT 1725	PAPER NUMBER
			MAIL DATE 08/08/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/656,812

Applicant(s)

DANZER, WOLFGANG

Examiner

M. Alexandra Elve

Art Unit

1725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,9,12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,9,12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Oath/Declaration

It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-4 & 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Goto (JP 410296472).

Goto discloses laser welding of an aluminum tank having a gaseous shield of carbon dioxide and oxygen. The carbon dioxide ranges from 10% to 62%.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-4 & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujimori et al. (USPN 4,258,242) and Goto, as stated above and further in view of the following:

Fujimori et al. discloses the use of shield gas containing argon and carbon dioxide for welding.

Goto discloses laser welding of an aluminum tank having a gaseous shield of carbon dioxide and oxygen. The carbon dioxide ranges from 10% to 62%.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use the carbon dioxide levels as taught by Goto in the Fujimori et al. system because both are directed to welding using a shielding environment.

Claims 1, 3-4 & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taira et al. (USPN 4,320,277) and Goto as stated above and further in view of the following:

Taira et al. discloses welding of a pipe using argon and carbon dioxide for shielding.

Goto discloses laser welding of an aluminum tank having a gaseous shield of carbon dioxide and oxygen. The carbon dioxide ranges from 10% to 62%.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use the carbon dioxide levels as taught by Goto in the Taira et al. system because both are directed to welding using a shielding environment.

Claims 1, 3-4 & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berlinger et al. (USPN 4,684,779) and Goto as stated above and further in view of the following:

Berlinger et al. discloses laser welding of metallic sheets using pressurized gases, such as argon, helium, carbon dioxide and nitrogen.

Goto discloses laser welding of an aluminum tank having a gaseous shield of carbon dioxide and oxygen. The carbon dioxide ranges from 10% to 62%.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use the carbon dioxide levels as taught by Goto in the Berlinger et al. system because both are directed to welding using a shielding environment.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goto, as stated above, and further in view of Mori et al. (USPN 6,399,915).

Goto does not teach the wavelength of the laser. Mori et al. discloses a laser welding unit, which has a wavelength of 500 to 1064 nm. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a laser wavelength, as taught by Mori et al. system because this is merely a standard laser parameter.

Response to Arguments

Applicant's arguments filed 5/18/07 have been fully considered but they are not persuasive.

Applicant argues that the Oath is valid because the foreign priority is in the data sheet. The examiner respectfully disagrees because that the data sheet is not a sworn Oath. Thus, applicant's Oath is still defective with respect to: "

It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing."

Applicant argues that the Berlinger does not disclose aluminum and its alloys. In response to applicant's arguments, the recitation aluminum and its alloys, has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicant argues that Berlinger fails to give amounts of gas constituents. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Alexandra Elve whose telephone number is 571-272-1173. The examiner can normally be reached on 7:30-4:00 Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jonathan Johnson can be reached on 571-272-1177. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 6, 2007.

/M. Alexandra Elve/
M. Alexandra Elve
Primary Examiner 1725